

701—126.7(421,441) Discovery and evidence.

126.7(1) *Discovery procedure.* The scope of discovery described in Iowa Rule of Civil Procedure 1.503 shall apply to contested case proceedings. When considering a question of relevancy, the board shall consider the provisions of Iowa Code chapter 441, 701—Chapter 71, and other applicable law. The following discovery procedures available in the Iowa Rules of Civil Procedure are available to the parties in a contested case proceeding: depositions upon oral examination or written questions; written interrogatories; production of documents, electronically stored information, and things; entry upon land for inspection and other purposes; and requests for admission. The time frames for discovery in specific Iowa Rules of Civil Procedure govern those specific procedures, unless lengthened or shortened by the board.

a. Iowa Rules of Civil Procedure 1.701 through 1.717 regarding depositions shall apply to any depositions taken in an appeal. Any party taking a deposition in an appeal shall be responsible for any deposition costs. Deposition costs include, but are not limited to, reimbursement for mileage of the deponent, costs of a certified shorthand reporter, and expert witness fees, as applicable.

b. Iowa Rule of Civil Procedure 1.509 shall apply to any interrogatories propounded in an appeal.

c. Iowa Rule of Civil Procedure 1.512 shall apply to any requests for production of documents, electronically stored information, and things; and entry upon land for inspection and other purposes in an appeal.

d. Iowa Rule of Civil Procedure 1.510 shall apply to any requests for admission in an appeal. Iowa Rule of Civil Procedure 1.511 regarding the effect of an admission shall apply in an appeal.

e. The mandatory disclosure and discovery conference requirements in Iowa Rules of Civil Procedure 1.500 and 1.507 do not apply to appeals before the board.

f. Iowa Rule of Civil Procedure 1.508 shall apply to discovery of any experts identified by a party to an appeal.

g. Discovery shall be served on all parties to the appeal, but shall not be filed with the board. Parties shall file a notice with the board when a notice of deposition or a discovery request or response is served on another party. The notice filed with the board shall include the date, the manner of service, and the names and addresses of the persons served. Other discovery materials shall not be filed unless ordered by the presiding officer.

126.7(2) *Discovery motions.* Prior to filing any motion related to discovery, parties shall make a good-faith effort to resolve discovery disputes without the involvement of the board or presiding officer. Any motion related to discovery shall allege that the moving party has made a good-faith attempt to resolve the discovery issues involved with the opposing party. Opposing parties shall be given the opportunity to respond within 10 days of the filing of the motion unless the time is shortened by order of the board or presiding officer. The board or presiding officer may rule on the basis of the written motion and any response or may have a hearing or other proceedings on the motion.

126.7(3) *Evidence.*

a. Admissibility. The presiding officer shall rule on admissibility of evidence and may take official notice of facts in accordance with all applicable requirements of law. Evidence obtained in discovery may be used in the case proceeding if that evidence would otherwise be admissible in that proceeding.

b. Stipulations. Stipulation of facts by the parties is encouraged. The presiding officer may make a decision based on stipulated facts.

c. Scope of admissible evidence. Evidence in the proceeding shall be confined to the issues contained in the notice from the board prior to the hearing, unless the parties waive their right to such notice or the presiding officer determines that good cause justifies expansion of the issues. Admissible evidence is that which, in the opinion of the board, is determined to be material, relevant, or necessary for the making of a just decision in accordance with the provisions of Iowa Code section 441.21, 701—Chapter 71, or other applicable law. Upon an objection pursuant to paragraph 126.7(3)“e,” irrelevant, immaterial or unduly repetitious evidence may be excluded. A finding shall be based upon the kind of evidence on which reasonably prudent persons are accustomed to rely for the conduct of their serious affairs, and may be based upon such evidence even if it would be inadmissible in a jury trial. Hearsay evidence is admissible. The rules of privilege apply in all proceedings before the board.

d. Exhibits, exhibit and witness lists, and briefs. The party seeking admission of an exhibit must provide an opposing party with an opportunity to examine the exhibit prior to the ruling on its admissibility. Copies of documents to be used as evidence, exhibit lists, and a list of witnesses intended to be called at hearing shall be served on the opposing party at least 21 calendar days prior to the hearing, unless the time period is extended or shortened by the board or presiding officer or the parties have filed a hearing scheduling and discovery plan under rule 701—126.6(421,441). Rebuttal evidence need not be exchanged or served on the opposing party prior to the hearing. All exhibits and briefs admitted into evidence shall be appropriately marked and be made part of the record. The appellant shall mark each exhibit with consecutive numbers. The appellee shall mark each exhibit with consecutive letters.

(1) The local board of review's Exhibit A shall be the subject property's property record card after implementation of the final decision of the board of review, including the cost report.

(2) The local board of review's Exhibit B shall be the final decision of the local board of review.

(3) The local board of review's Exhibit C shall be the appellant's petition to the local board of review.

e. Objections. Any party may object to specific evidence or may request limits on the scope of examination or cross-examination. Such an objection shall be accompanied by a brief statement of the grounds upon which the objection is based. The objection, the ruling on the objection, and the reasons for the ruling shall be noted in the record. The presiding officer may rule on the objection at the time it is made or may reserve a ruling until the written decision.

f. Offers of proof. Whenever evidence is ruled inadmissible, the party offering that evidence may submit an offer of proof on the record. The party making the offer of proof for excluded oral testimony shall briefly summarize the testimony or, with permission of the presiding officer, present the testimony. If the excluded evidence consists of a document or exhibit, it shall be marked as part of an offer of proof and inserted in the record.

g. Judicial notice of property record cards. Without additional notice, the board may take judicial notice of the property record card or cost report of the subject property if electronically available to the public through the assessor's Web site. At its discretion, the board may take judicial notice of property record cards or cost reports of comparable properties identified by the parties as provided under Iowa Code section 17A.14(4) if electronically available to the public through the assessor's Web site. If the board takes judicial notice of any property record card or cost report, such card or report shall become part of the board's official agency record for the appeal.

126.7(4) Subpoenas.

a. Issuance.

(1) Pursuant to Iowa Code section 17A.13(1), a subpoena shall be issued to a party on request, unless otherwise excluded pursuant to this subrule. The request shall be in writing and include the name, address, and telephone number of the requesting party. In absence of good cause for permitting later action, a request for subpoena must be received at least 14 days before the scheduled hearing.

(2) Except to the extent otherwise provided by law, parties are responsible for service of their own subpoenas and payment of witness fees and mileage expenses.

(3) The board shall refuse to issue a subpoena when there is reasonable ground to believe the subpoena is requested for the purpose of harassment; may seek irrelevant information as provided under Iowa Code section 441.21, 701—Chapter 71, or other applicable law; or is untimely. If the board refuses to issue a subpoena, the board shall provide a written statement of the ground for refusal. A party to whom a refusal is issued may obtain a prompt hearing before the board regarding the refusal by filing with the board and serving on all parties a written request for hearing.

b. Motion to quash or modify. Upon motion, the board or presiding officer may quash or modify a subpoena for any lawful reason in accordance with the Iowa Rules of Civil Procedure or pursuant to this subrule.

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